

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:18-CR-102-RLJ-HBG
)	
CODY WAYNE RUTHERFORD,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This case came before the Court on November 19, 2018, upon the referral [Doc. 17] of United States District Judge R. Leon Jordan, for a status conference and motion hearing. *See* 28 U.S.C. § 636(b). Assistant United States Attorney Luke McLaurin appeared on behalf of the Government. Assistant Federal Defender Bobby E. Hutson, Jr., represented the Defendant, who was also present.

On October 16, 2018, the Government filed a factual basis [Doc. 13] with regard to Defendant Rutherford. A change of plea hearing was scheduled, and the October 30, 2018 trial date was removed. On November 1, 2018, Defendant Rutherford filed a Motion to Dismiss Indictment [Doc. 16], and the Government responded [Doc. 18] on November 6, 2018. The undersigned heard argument on the Motion to Dismiss Indictment on November 19, 2018. At that time, the parties agreed on a new trial date of March 18, 2019, to allow for a ruling on the motion.

The Court finds the trial date should be reset for March 18, 2019, because the ends of justice served by continuing the trial outweigh the interest of the Defendant and the public in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). The Defendant has filed a motion that, if granted, would be dispositive of the case. 18 U.S.C. § 3161(h)(1)(D). The Court heard argument on the motion

on November 19 and, at that time, took it under advisement. The undersigned needs time, not to exceed thirty days, to prepare a report and recommendation on the motion. 18 U.S.C. § 3161(h)(1)(H). Thereafter, the parties will need time to file objections and to respond to objections. Then, the District Judge will need time to rule on the motion in light of the report and objections. 18 U.S.C. § 3161(h)(1)(H). Finally, in the event that the Indictment is not dismissed, the Defendant will need time to prepare for trial or to proceed with a change of plea. Accordingly, the Court finds that the failure to continue the trial in this case would result in a miscarriage of justice, because the Defendant would be forced to proceed to trial or plea without a ruling on his Motion to Dismiss Indictment. 18 U.S.C. § 3161(h)(7)(B)(i).

Accordingly, the trial of this matter is reset to **March 18, 2019**. The Court also finds that all the time between the filing of the Motion to Dismiss Indictment on **November 1, 2018**, and the new trial date of **March 18, 2019**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. *See* 18 U.S.C. § 3161(h)(1)(D), -(1)(H), & -(7)(A)-(B). With regard to other scheduling in this case, the parties are to appear before the undersigned for a final pretrial conference on **March 6, 2019, at 11:00 a.m.** The new deadline for concluding plea negotiations and for providing reciprocal discovery is also **March 6, 2019**. The Court instructs the parties that all motions *in limine* must be filed no later than **March 4, 2019**. Special requests for jury instructions shall be submitted to the District Judge no later than **March 8, 2019**, and shall be supported by citations to authority pursuant to Local Rule 7.4.

Accordingly, it is **ORDERED**:

- (1) The trial of this matter is reset to commence on **March 18, 2019, at 9:00 a.m.**, before the Honorable R. Leon Jordan, United States District Judge;
- (2) All time between the filing of the Defendant's Motion to Dismiss Indictment on **November 1, 2018**, and the new trial date of **March 18,**

2019, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;

(3) The Court instructs the parties that all motions *in limine* must be filed no later than **March 4, 2019**;

(4) The parties are to appear before the undersigned for a final pretrial conference on **March 6, 2019, at 11:00 a.m.** This date is also the deadline for concluding plea negotiations and for providing reciprocal discovery; and

(5) Special requests for jury instructions shall be submitted to the District Judge no later than **March 8, 2019**, and shall be supported by citations to authority pursuant to Local Rule 7.4.

IT IS SO ORDERED.

ENTER:


United States Magistrate Judge